



Date: February 2, 2016

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Steven Hicks, Director, General Services Department

Subject: Resolution Authorizing the Execution and Delivery of a 2nd Notice of Extension to the DPAC Deed of Trust to extend the Lien to Additional Premises and Execution of Collateral Assignment of Lease.

Executive Summary

On September 16, 2013, City Council authorized the City Manager to execute a development agreement ("Development Agreement") with Blackwell Street Management Company, LLC and its affiliates (collectively, the "Developer") for the development and construction of the Diamond View Hotel Condominium to be constructed adjacent to, and connecting to the Durham Performing Arts Center ("DPAC"). According to the terms of the Development Agreement, the project required a certain minimum private investment from the Developer in exchange for certain public investments in the project, which required the conveyance of certain real property rights between the parties. Pursuant to the terms of the DPAC real property deed of trust, the trustee had to give consent before any DPAC property secured by the deed of trust could be conveyed to the Developer pursuant to the project. Additionally, the DPAC real property deed of trust required that notice be given extending the deed of trust lien over the additional property acquired pursuant to the Development Agreement over real property interests acquired from the Developer. On October 21, 2013, City Council adopted Resolution No. 9876 pursuant to the DPAC real property deed of trust to both authorize the partial release of certain property interests and provide notice of extension of the deed of trust to additional properties ("First Notice"). Consistent with the terms of the Development Agreement, the Developer completed the construction of Diamond View Hotel Condominium including the DPAC Restroom Unit ("Restroom Unit") and the new DPAC President's Club ("DPAC Club Unit"). Now that the Restroom Unit has been purchased by the City pursuant to the terms of the original Development Agreement and the DPAC Club Unit has been leased by the City, a second notice of extension of deed to additional property ("2nd Notice") is required for the Restroom Unit and execution of a collateral assignment of lease is required for the DPAC Club Unit ("Collateral Assignment of Lease").

Recommendation:

That City Council:

1. Adopt a resolution authorizing the execution and delivery of a second notice of extension to the deed of trust to additional property and execution of a collateral assignment of lease; and,
2. Authorize the City Manager to execute a collateral assignment of lease in the DPAC Club Unit to U.S. Bank National Association.

Background

The DPAC is located at 123 Vivian Street and sits on approximately 1.465 acres. In 2015, construction was completed on the Diamond View Hotel Condominium located immediately adjacent to the west side of the DPAC. The Diamond View Hotel Condominium consists of approximately 100,080 square feet of space comprising six condominium units, including the Hotel Unit, the North Retail Unit, the South Retail Unit, the Restroom Unit, the DPAC Club Unit and the Elevator Unit.

The Restroom Unit is the new women's restroom facility for the DPAC and the DPAC Club Unit is being used as the new President's Club Lounge, both accessible from the second floor of the DPAC. The Restroom Unit augments current facilities, thereby reducing the long lines that form during short intermission time frames of DPAC events. The Restroom Unit includes 15 new toilets. The DPAC Club Unit houses the new President's Club Lounge which serves as the VIP premium seating program for the DPAC. In addition to key benefits such as premium seats and reserved parking, VIP members can take advantage of access to the President's Club Lounge which includes separate entry and direct DPAC connection, separate restrooms within the lounge area, enlarged lounge/seating area and updated audio-visual features.

Issues and Analysis:

The original DPAC facility directly connects to the Restroom Unit and the DPAC Club Unit of the Diamond View Hotel Condominium ("Condominium"). Pursuant to the terms of the Development Agreement and authority given by the City Council, the City purchased the Restroom Unit by deed dated December 3, 2016 and commenced leasing the DPAC Club Unit on September 23, 2015. Given the connectivity of both the Restroom Unit and DPAC Club Unit to the original DPAC facility, the DPAC deed of trust and related security documents for the DPAC require extension of the lien over the Restroom Unit property and a collateral assignment of the city's leasehold interest in the DPAC Club Unit to U.S. Bank National Association ("U.S. Bank") as trustee.

In the First Notice, the original DPAC premises, as defined by the DPAC deed of trust, was amended to extend the lien to cover the real property interests conveyed by the Developer as necessary for the constructing the Condominium. Now that the Condominium has been completed, and the City has purchased the Restroom Unit, the terms of the DPAC deed of trust require a 2nd Notice to further extend the lien to include the connected Restroom Unit. Similarly, given the physical connectivity and shared operational use of the DPAC Club Unit to the original DPAC premises, the City is conveying to U.S. Bank a collateral assignment of

lease in the DPAC Club Unit. The 2nd Notice makes reference to the Collateral Assignment of Lease in addition to extending the DPAC deed of trust lien over the Restroom Unit.

Alternatives:

The adoption of the resolution for execution and delivery of the 2nd Notice and the execution of the Collateral Assignment of Lease is required pursuant to the DPAC deed of trust.

Financial Impact:

There is no financial impact associated with adoption of the resolution.

Attachments:

1. 2nd Notice
2. Resolution
3. Collateral Assignment of Lease